



INTERIOR BOARD OF INDIAN APPEALS

Ella M. Chee v. Navajo Regional Director, Bureau of Indian Affairs

53 IBIA 29 (02/10/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ELLA M. CHEE,)	Order Docketing and
Appellant,)	Dismissing Appeal
)	
v.)	
)	
NAVAJO REGIONAL DIRECTOR,)	Docket No. 11-028
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	
)	February 10, 2011

Ella M. Chee (Appellant) appealed to the Board of Indian Appeals (Board) from the alleged inaction of the Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA), on a request to approve an alleged gift deed by Harrison H. Yazzie, deceased, conveying Allotment 1461 to Appellant. If approved, the gift conveyance would vest title to Allotment 1461 in Appellant and remove it from Yazzie's estate inventory.¹ This appeal was filed after Appellant submitted a request for action to the Regional Director under 25 C.F.R. § 2.8 (Appeal from inaction of an official), and the Regional Director failed to take action or issue a decision.²

On December 27, 2010, at the request of the Board, the Regional Director filed a status report, which stated that BIA had undertaken and had completed a search of its records in various locations, including the National Archives and Records Administration in Lenexa, Kansas; the Navajo Regional Office; and other BIA agency offices throughout the southwest, in an attempt to locate the gift deed executed by Decedent. The Regional

¹ The dispute over the alleged gift deed arose during the probate of Yazzie's Indian trust estate (Probate No. P000009534IP), and the Board referred the inventory dispute to BIA for a decision. *See Estate of Harrison H. Yazzie*, 51 IBIA 307 (2010).

² Section 2.8 provides, in relevant part, that when a request for action is made pursuant to § 2.8(a), the BIA official receiving the request "must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request." 25 C.F.R. § 2.8(b).

Director further reported that he “now has all of the information available and necessary to render a decision as to the nature, scope, history, and validity of the alleged [g]ift [d]eed.” Agency’s Status Report at 2. The Regional Director states that he “intends to issue his decision on this matter within sixty (60) days from the date of this filing, if not sooner.” *Id.* Sixty days from the date of the filing is February 25, 2011.

The Board received no response from Appellant to the Regional Director’s status report, although the Board allowed her to respond.

As a general rule, when it is apparent that BIA is actively working on an appellant’s request for action, the Board has dismissed § 2.8 appeals, reasoning that BIA should be allowed to complete its review and issue a decision. *See, e.g., Seminole Nation of Oklahoma v. Eastern Oklahoma Regional Director*, 51 IBIA 217, 218 (2010); *Shirwits Band of Paiutes v. Western Regional Director*, 44 IBIA 2, 3 (2006); *Paiute Indian Tribe of Utah v. Western Regional Director*, 40 IBIA 163, 164 (2004); *Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services*, 27 IBIA 43, 45 (1994).

In the present case, the Regional Director represents that BIA was undertaking a search for records and information relevant to Appellant’s request and that BIA is actively working on the request. The Regional Director has now committed to a timetable for issuing a decision, and Appellant did not file a response. Under the circumstances, the Board concludes that dismissal is appropriate.³

The Board notes that in bringing this appeal, the relief sought by Appellant was an order from the Board approving the gift conveyance. But, as explained previously by the Board, the Board’s authority in a § 2.8 appeal does not encompass the underlying merits of an appellant’s request for BIA action or decision. *See* Pre-Docketing Notice and Order for Status Report, Oct. 5, 2010, at 2, n.1 (citing *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006)). Further, contrary to Appellant’s suggestion, 43 C.F.R. § 4.318 (scope of review) does not permit the Board to consider the merits of Appellant’s challenge. *Id.* (citing *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 247, 251 (2007); *Lowe v. Acting Eastern Oklahoma Regional Director*, 48 IBIA 155, 159 n.6

³ Although we dismiss this appeal now that the Regional Director has established a timetable for issuing a decision, we emphasize that when BIA receives a § 2.8 demand for action or decision, § 2.8 requires that BIA issue a decision within 10 days of receipt of the request *or establish a reasonable timetable for issuing a decision*. Choosing not to respond is not authorized by the regulations.

(2008)). Thus, to the extent Appellant seeks relief through this § 2.8 appeal that goes beyond prompting action by BIA, granting that relief is beyond our jurisdiction.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed but dismisses this appeal.⁴

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ Although the Board expects the Regional Director, on or before February 25, 2011, to issue a decision (which must advise interested parties of their appeal rights), if he fails to do so, Appellant is not precluded from seeking reconsideration of our dismissal through a timely petition for reconsideration. *See* 43 C.F.R. § 4.315.